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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,254	04/14/2004	John F. Burd	OCULIR03	6520
27189	7590	04/26/2005	EXAMINER	
PROCOPIO, CORY, HARGREAVES & SAVITCH LLP			KREMER, MATTHEW J	
530 B STREET			ART UNIT	
SUITE 2100			PAPER NUMBER	
SAN DIEGO, CA 92101			3736	

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/824,254

Applicant(s)

BURD ET AL.

Examiner

Matthew J Kremer

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,7-14,17 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-14,17-19 and 23 is/are allowed.
- 6) ☒ Claim(s) 1-4,7-11 and 20-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/22/04;10/4/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer filed on 2/24/2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration dates of U.S. Patent Applications 10/428,410 and 10/824,214 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Application Publication 2002/0049389 to Abreu. In regard to claim 20, Abreu discloses a computer processor with a computer program (a data processing unit), a memory (recording unit), and a communications interface (a modem). (paragraph 0151 of Abreu). It is noted that the limitation "for downloading and storing data collected according to claim 1" in claim 20, lines 1-2 is merely "intended use" language, which cannot be relied upon to define over Abreu, since Abreu discloses all of the claimed elements and their recited relationships. See *Ex parte Masham* 2 USPQ 2nd 1647. In

regard to claim 21, Abreu discloses a computer processor with a computer program (a data processing unit), a memory (recording unit), and a communications interface (a modem). (paragraph 0151 of Abreu). It is noted that the limitation "for downloading and storing data collected according to claim 12" in claim 21, lines 1-2 is merely "intended use" language, which cannot be relied upon to define over Abreu, since Abreu discloses all of the claimed elements and their recited relationships. See *Ex parte Masham 2* USPQ 2nd 1647.

4. Claims 1-4, 7-11, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Application Publication 2001/0034478 to Lambert et al. (Lambert). Lambert teaches a method for determining glucose, which includes detecting radiation from one or more conjunctiva vessels in the eye. (Abstract of Lambert). The detected radiation includes Raman and fluorescence spectra, which are subtracted from each other to produce a difference spectrum. (Abstract of Lambert). The difference spectra is then used to determine the analyte of interest. (Abstract of Lambert). The step of detecting the fluorescence spectrum is considered the step of detecting the mid-infrared radiation emitted from the conjunctiva since the spectrum from 500 to 3500 cm^{-1} is detected and used. (Fig. 1 of Lambert). The fluorescent spectrum is used to determine the analyte since it is used to determine the difference spectrum. In regard to claims 3-4, glucose is determined. (Abstract of Lambert). In regard to claims 7-9, the spectrum from 500 to 3500 cm^{-1} is selected and used. (Fig. 1 of Lambert). In regard to claim 10, filters are disclosed. (Fig. 7b of Lambert). In regard

to claim 11, microprocessor 35 is used. (Figs. 5, 7, and 10B of Lambert). In regard to claim 22, a communications link is disclosed so that information is transmitted, download, and stored. (paragraph 0089 of Lambert).

Response to Arguments

5. In regard to claims 20-21, Applicant's arguments filed 2/24/2005 have been fully considered but they are not persuasive. In regard to claim 20, the Applicant has not fully addressed the Examiner's rejection since the Examiner maintains that the limitation "for downloading and storing data collected according to claim 1" is merely "intended use" language, which cannot be relied upon to define over Abreu, since Abreu discloses all of the claimed elements and their recited relationships. See Ex parte Masham 2 USPQ 2nd 1647. Thus, the amendments to claim 1 have not been imported into claim 20 and the rejection of claim 20 as anticipated by Abreu reference has not been overcome. In regard to claim 21, the Applicant has not fully addressed the Examiner's rejection since the Examiner maintains that the limitation "for downloading and storing data collected according to claim 12" is merely "intended use" language, which cannot be relied upon to define over Abreu, since Abreu discloses all of the claimed elements and their recited relationships. See Ex parte Masham 2 USPQ 2nd 1647. As a result, the amendments to claim 12 have not been imported into claim 21 and the rejection of claim 21 as anticipated by Abreu reference has not been overcome.

Art Unit: 3736

6. Applicant's arguments with respect to claims 1-4, 7-11, and 22 are have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

7. Claims 12-14, 17-19, and 23 are allowed.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J Kremer whose telephone number is 571-272-

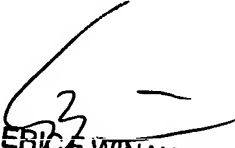
Art Unit: 3736

4727. The examiner can normally be reached on Mon. through Fri. between 8:30 a.m. - 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Matthew Kremer
Assistant Examiner
Art Unit 3736


ERIC F. WINAKUR
PRIMARY EXAMINER